

Federal Communications Commission

DA 97-1695

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Hawthorne, Wisconsin)

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)
)
) MM Docket No. 97-180
) RM-9105
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NOTICE OF PROPOSED RULE MAKING

Adopted: August 6, 1997

Released: August 15, 1997

Comment Date: October 6, 1997

Reply Date: October 21, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Bruce F. Elving ("Elving"), requesting the allotment of Channel 293A to Hawthorne, Wisconsin, as that community's first local broadcast service. Elving stated his intention to file an application for Channel 293A at Hawthorne.
2. In support of his request, Elving has provided an engineering statement that indicates Channel 293A can be allotted to Hawthorne, Wisconsin. Elving argues that although the community is small, it has several businesses and a post office. Elving points out that Hawthorne is near South Range, Maple, Poplar, Bennett, Wentworth and the towns of Oakland and Lake Nebagamon, Wisconsin, all small communities without local radio or television stations that could benefit by an allotment at Hawthorne. According to Elving, there is sufficient community interest to support a commercial FM station in this part of rural Douglas County. Elving believes that the station could provide much needed public service announcements such as school closings and weather reports.
3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community facts, the petitioner must present the Commission with sufficient information to demonstrate that such a place has the social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., Oak Grove, FL, 5 FCC

Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). Although Hawthorne is attributed with a population of 100 people, along with a post office and zip code (54842) by the 1995 edition of the Rand McNally Commercial Atlas ("Atlas"), we may find that a population grouping does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations. See, e.g., Searles, CA, 3 FCC Rcd 5221 (1988); see also, Naples, FL, 41 RR 2d 1549 (1977). We note that the 1990 Census credits the Town of Hawthorne with a population of 1,049 and that the Atlas lists the same zip code and post office for the Town of Hawthorne as it does for Hawthorne.¹ Therefore, Elving is requested to submit information regarding Hawthorne, Wisconsin, to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality. Also, Elving is requested to specify Hawthorn or the Town of Hawthorne, as the allotment site for Channel 293A.

4. A staff review of the proposal reveals that Channel 293A can be allotted to Hawthorne, Wisconsin, consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 5.4 kilometers (3.3 miles) west of the community.² The site restriction will prevent a short spacing to Channel 290C1, Station WEGZ, Washburn, Wisconsin. Since Hawthorne is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel 293A at Hawthorne.

5. We believe the public interest would be served by proposing the allotment of Channel 293A to Hawthorne, Wisconsin, in the event it is ultimately found to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Hawthorne, as follows:

Community	Channel No.	
	Present	Proposed
Hawthorne, Wisconsin	-----	293A

6. The Commission's authority to institute rule making proceedings, showings required, cut-

¹The Rand McNally Commercial Atlas, under Wisconsin, provides the following General Note: Wisconsin minor civil divisions consist of 1,267 "towns" and 583 incorporated cities and villages. The Towns are legally incorporated units, similar to townships in other midwestern states. They may levy taxes, elect certain officials, and carry on limited governmental functions.

² The coordinates for Channel 293A at Hawthorne are 46-29-37 and 91-55-34.

off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **October 6, 1997**, and reply comments on or before **October 21, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Bruce F. Elving
P. O. Box 336
Esko, Minnesota 55733-0336

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.